IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re the Marriage of:	)	**No. 27337-7-III**
TRISHA C. PFEIFER,	)	
	)	**Division Three**
Appellant,	)	
	)	
v.	)	**UNPUBLISHED OPINION**
	)	
PHILLIP G. PFEIFER,	)	
	)	
Respondent.	)	
	)	

Brown, J.—A superior court commissioner found Phillip Pfeifer in contempt of his and Trisha Pfeifer's child support order for failure to pay his share of daycare expenses. He requested revision by a superior court judge, arguing the Montessori program his son was attending was a school, not a daycare, and he should have been involved in the decision-making process per the parenting plan. The judge agreed and revised the commissioner's order. Ms. Pfeifer appeals, contending (1) the court erred by considering an e-mail from Ms. Pfeifer to Mr. Pfeifer and (2) the judge wrongly conducted outside research before reaching his decision. We affirm.

FACTS

The Pfeifers have a five-year-old son, Kameron. Following their dissolution, the court entered a parenting plan, ordering joint education decisions. The court ordered the parties to each pay 50 percent of daycare and educational expenses. In September 2007, when Kameron was two years old, he was enrolled at Cornerstone Montessori. While Ms. Pfeifer picked the school, Mr. Pfeifer's girl friend and mother took him on the first day and officially enrolled him. The cost of Cornerstone was $320.00 for 3 days a week. Soon after Kameron started attending Cornerstone, Mr. Pfeifer contacted its director and informed her Kameron would not attend on Wednesdays and disagreed with Kameron attending Cornerstone in general. Mr. Pfeifer did not pay his portion of costs for Kameron attending Cornerstone.

In January 2008, Ms. Pfeifer filed a motion for contempt against Mr. Pfeifer for failure to pay. Mr. Pfeifer alleged contempt, arguing Ms. Pfeifer unilaterally enrolled Kameron in a school without allowing him to join in the decision-making process.

A superior court commissioner denied Mr. Pfeifer's motion, but granted Ms. Pfeifer's, finding Mr. Pfeifer in contempt for failure to pay his share of daycare expenses and ordering him to pay $695.00 in unpaid Montessori costs. Mr. Pfeifer requested reconsideration. Attached to his motion was an e-mail from Ms. Pfeifer, stating, "[t]he need for Kameron to go to school is not for childcare. It is for education purposes." Clerk's Papers (CP) at 83. Ms. Pfeifer argued this e-mail was not properly before the commissioner on reconsideration because it was not in the original record.

Apparently, the commissioner denied reconsideration.

Mr. Pfeifer moved for revision by a superior court judge. During the hearing, Ms. Pfeifer again objected to the e-mail. The court allowed the e-mail, stating, "[I]f it was part of the record before the commissioner, including the reconsideration, it is probably within the scope. So I will permit." Report of Proceedings (RP) at 3.

During his oral ruling on the motion to revise, the judge stated, "I did a little bit of simple research here and at least informed myself a little bit or reminded myself of what I understood a Montessori program to be." RP at 14. The judge then read on the record a passage about the definition of a Montessori program. The judge granted Mr. Pfeifer's revision request, finding the school was for education not child care, so Mr. Pfeifer should have been involved in the decision-making process. Ms. Pfeifer appeals.

ANALYSIS

The issue is whether the trial court erred by abusing its discretion in considering the email attached to Mr. Pfeifer's reconsideration motion and researching the definition of a Montessori program.

We review a trial court's evidentiary rulings for an abuse of discretion. *Allen v. Asbestos Corp.,* 138 Wn. App. 564, 570, 157 P.3d 406 (2007). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *City of Kennewick v. Day,* 142 Wn.2d 1, 5, 11 P.3d 304 (2000).

On revision of a commissioner's ruling under RCW 2.24.050, the superior court judge's review "shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner." Spokane County Local Rule 0.7(d) also states, "The hearing will be on the factual record made before the Commissioner." The motion to reconsider, with its e-mail attachment, was before the commissioner. During the revision hearing, Ms. Pfeifer's attorney states the attachment "came in" during the reconsideration proceedings. RP at 3. Since all proceedings before the commissioner, including reconsideration proceedings, are properly before the judge on revision, the trial judge did not abuse his discretion in admitting the e-mail attached to Mr. Pfeifer's motion for reconsideration.

Evidence before a revision judge is limited to the record before the commissioner. RCW 2.24.050 and LAR 0.7(d). Generally, a party is denied a fair hearing when a judge reviews evidence outside the record. Here, the trial judge looked up the definition of a Montessori program. As explained by the 7th Circuit, independent research at times "shows industry rather than the sort of indolence that might deprive the parties of a fair hearing. . . . [I]t is the sleepwalking judge, not the diligent one, who deprives the litigant of the personal right to careful, individual consideration. . . . Courts frequently decide cases on lines of reasoning that can't be found in the briefs." *Hampton v. Wyant,* 296 F.3d 560, 564-65 (7th Cir. 2002). Washington courts have also not found reversible error for outside research that does not prejudice the parties.

See Lockwood v. AC & S, Inc., 44 Wn. App. 330, 359-60, 722 P.2d 826 (1986) (court found no reversible error when juror researched defendant companies on the stock exchange), *affirmed*, 109 Wn.2d 235, 744 P.2d 605 (1987).

Here, the revision judge prefaced his remarks about the Montessori program by saying, "I did a little bit of simple research here about the Montessori program and at least informed myself a little bit or reminded myself of what I understood a Montessori program to be." RP at 14. Refreshing the court's memory about the Montessori program fits comfortably within the boundaries of *Hampton* and *Lockwood*. Therefore, we conclude the revision judge did not err informing itself.

Ms. Pfeifer offers a policy argument regarding the impact on the public if parents slack off their financial obligation to their children, but it is outside her assignments of error. And, we do not give advisory opinions. *In re Marriage of Davisson,* 131 Wn. App. 220, 226-27, 126 P.3d 76 (2006). We decline to address the policy argument.

Both parties request attorney fees under RCW 26.09.140. To award attorney fees on appeal, we examine "the financial resources of the respective parties." *In re Marriage of Griffin,* 114 Wn.2d 772, 779, 791 P.2d 519 (1990). Neither party has filed an affidavit of financial need/inability to pay as required under RAP 18.1(c). Therefore, their requests are denied.

Mr. Pfeifer also seeks attorney fees under RCW 26.04.160(7). Where a party moves for contempt under RCW 26.09.160, a court may award attorney fees to the non-

moving party "if the court finds the motion was brought without reasonable basis." RCW 26.09.160(7). Where a reasonable basis for the contempt motion exists, the nonmoving party is not entitled to attorney fees even if the motion for contempt is denied. *In re Marriage of Humphreys,* 79 Wn. App. 596, 599, 903 P.2d 1012 (1995). Because the parties' support order requires the parties to split education and daycare expenses and Mr. Pfeifer failed to pay his share of the Cornerstone Montessori expense for Kameron, Ms. Pfeifer had a reasonable basis to allege contempt. Mr. Pfeifer's request is denied.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Brown, J.

WE CONCUR:

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Schultheis, C.J.

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Kulik, J.